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CENTRAL DISTRICT OF CALIFORNIA  
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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION

In re  
Substantively Consolidated  
Bankruptcy Estates of MIDLAND  
EURO EXCHANGE INC.; MIDLAND  
GROUP, INC.; MOSHE LEICHNER;  
and ZVI LEICHNER

Debtors

SIMON KATZMAN, an individual;  
and CONTINENTAL FLIGHT CENTER,  
INC., a Nevada corporation

Plaintiffs,

v.

MOSCHE LEICHNER, an  
individual; and CHRISTOPHER R.  
BARCLAY, solely as Trustee of  
the herein Substantively  
Consolidated Bankruptcy  
Estates, et al.,.

Defendants.

CHRISTOPHER R. BARCLAY,  
Trustee of the Substantively  
Consolidated Bankruptcy  
Estates of Midland  
Euro Exchange Inc., Midland  
Euro, Inc., Midland Group,  
Inc.; Moshe Leichner, and Zvi  
Leichner,

Counter-claimants,

v.

SIMON KATZMAN aka SK FORKLIFT;  
CONTINENTAL FLIGHT CENTER,  
INC., a Nevada corporation;  
and CONTINENTAL JET  
MANAGEMENT, INC.,  
a Nevada corporation,

Counterclaim-defendants.

Case No. SV03-13981-GM  
[Includes cases previously  
designated BK. Case Nos. SV03-  
13982-AG, SV03-13986-AG,  
SV03-13987-AG, and  
SV03-13989-AG]

Chapter 7

ADV. NO. SV03-01425-GM

**PRELIMINARY MEMORANDUM OF  
OPINION AFTER TRIAL**

TRIAL

DATES: JULY 11-15, 2005  
PLACE: COURTROOM 303  
21041 BURBANK BLVD.  
WOODLAND HILLS, CA 91367

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1 Moshe Leichner has pleaded guilty to fraud and other  
2 criminal acts and has agreed to twenty years in federal prison  
3 and a restitution judgment of \$98 million.<sup>1</sup> This case is only a  
4 small part of the web of financial affairs created by Leichner.  
5 It involves issues of ownership of, title to, and payment for ten  
6 airplanes used in a flying school and relies on the credibility  
7 of the key witnesses to overcome the documentary evidence.

8 After a five day trial and review of the evidence and the  
9 law, I find that the Trustee holds title to nine of the airplanes  
10 and that the Trustee and Katzman are each a 50% owner of the  
11 tenth plane. I further find that Katzman is liable for damages  
12 due to his secreting or destroying the logbooks for these planes,  
13 and that Katzman violated the preliminary injunction and the  
14 automatic stay. There will be a further evidentiary hearing to  
15 determine damages.

## 16 17 **I. PROCEDURAL HISTORY**

18 This adversary proceeding was brought in the bankruptcy  
19 proceedings of Midland Euro, Inc. ("MEI"), Midland Euro Exchange,  
20 Inc. ("MEE"), Midland Group, Inc. ("MGI"), and other Moshe  
21 Leichner and Zvi Leichner entities. The details of Leichner's  
22 financial schemes are alleged in the counterclaim and denied by  
23 Katzman, but do not directly deal with the ownership of these  
24 planes except that the Trustee contends that the Midland/Leichner  
25

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26 <sup>1</sup> *United States v. Moshe Leichner and Zvi Leichner*, U.S.D.C. No. CR 03-568, U.S.  
27 District Court for the Central District of California.

1 entities implemented a scheme to use third parties to hold  
2 nominal legal title to assets with the express or implied  
3 agreement that the third parties were nominees and/or agents of  
4 Moshe Leichner and/or other Midland/Leichner entities. He  
5 further asserts that two of the corporations which were created  
6 for the purpose of holding title to aircraft owned by Leichner  
7 and/or Midland/Leichner entities were Continental Jet Management,  
8 Inc. ("Continental Jet"), a Nevada corporation, and EAL Jet  
9 Management, Inc. ("EAL Jet"). At trial Katzman did not dispute  
10 the purpose or structure of these entities.

11 On October 8, 2003, Simon Katzman ("Katzman") and  
12 Continental Flight Center, Inc. ("CFCI") filed this adversary  
13 proceeding against Christopher Barclay, Chapter 7 Trustee  
14 ("Trustee"), Moshe Leichner, Continental Air Care, Inc. ("CACI"),  
15 and Clyde D. Sorrells seeking to set aside fraudulent transfers,  
16 and requesting declaratory relief and an injunction as to nine  
17 aircraft and their spare parts. CACI and Sorrells were later  
18 dismissed by stipulation.

19 After a series of motions to dismiss, the Trustee answered  
20 the First Amended Complaint and filed his counterclaim against  
21 Katzman and CFCI [Continental Jet Management was later joined as  
22 a counter-defendant] for turnover, avoidance of fraudulent  
23 transfers, damages for violation of automatic stay, substantive  
24 consolidation, declaratory relief, and an injunction. At some  
25 point, which is not clear from the docket, the Trustee also filed  
26 a cross-claim against EAL Jet Management, which never answered  
27

1 and may never have been served. Default was entered against  
2 Continental Jet Management on August 24, 2004, but no judgment  
3 has been requested or entered.<sup>2</sup> On April 7, 2004, Katzman  
4 filed a motion for turnover of copies of certificates of  
5 registration of nine aircraft and a motion for turnover of  
6 insurance proceeds. Judge Greenwald denied this at the continued  
7 hearing on May 19, 2004 on the grounds that the planes were  
8 grounded pending resolution of the Trustee's counterclaims, but  
9 the docket does not reflect an order on this motion. On April  
10 21, 2004, the Trustee filed a motion for a preliminary injunction  
11 on counterclaims by the Trustee against Katzman and CFCI, which  
12 was granted on May 20, 2004, enjoining the transfer or  
13 encumbrance of the ten aircraft and their operation without the  
14 Trustee's written consent. On February 1, 2005, in preparation  
15 for Judge Greenwald's retirement, this case was transferred to  
16 me.

17 A joint pre-trial order was entered on April 13, 2005.  
18 Three weeks before trial, Robert Yaspan, Katzman's attorney,  
19 withdrew without objection and William Schultz, who was  
20 originally identified as an expert witness for Katzman in the  
21 area of FAA laws, substituted in to serve as trial counsel.<sup>3</sup> The  
22 trial commenced July 11, 2005 and concluded on July 15, 2005, at  
23 which time I submitted the matter for decision. This memorandum  
24

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25 <sup>2</sup> The counterclaim seeks a judgment for fraudulent transfer as to Continental Jet and  
26 Substantive Consolidation of EAL and Continental Jet.

27 <sup>3</sup> There is no substitution of attorney on file as of August 5, 2005.  
28

1 constitutes my findings of fact and conclusions of law.

## 3 **II. FACTUAL FINDINGS**

4 This case focuses on the ownership of ten aircraft used in  
5 the operation of a flight school. The aircraft in question fall  
6 into two groups: (1) nine planes ("nine planes") first registered  
7 with the FAA to Continental Jet Management, Inc. and later  
8 transferred to Continental Air Care Inc. and (2) a Beech H-35  
9 Bonanza aircraft ("Beech," "Bonanza," or "Beech Bonanza")  
10 initially registered with the FAA to MEI and Katzman and later  
11 transferred solely to Katzman. An eleventh aircraft was  
12 purchased, but it was seized by the FBI as a stolen plane before  
13 it could be registered. A list and description of all eleven  
14 planes is set forth in Attachment 1 hereto.

### 16 **A. Facts Not Based on Credibility**

17 Most of the facts are identified as undisputed in the  
18 Pretrial Order or the evidence is so clear that they might be  
19 considered uncontested. It is the application of these facts,  
20 along with the necessity to determine a few issues where  
21 credibility plays a role, that is the crux of this case.

22 Moshe Leichner and Simon Katzman knew each other for some  
23 years and were part of an Israeli flying club which meets at the  
24 Van Nuys Airport. In 1999 Leichner purchased the Beech Bonanza  
25 and in March 2000 it was registered in the names of Midland Euro,  
26 Inc. and Katzman, although Katzman testified that Leichner did

1 not want to fly this plane because it was old. Sometime after  
2 the purchase of the Beech, Leichner and Katzman agreed to create  
3 a flight school at the Van Nuys Airport. To that end, California  
4 Flight Center, Inc. was incorporated in Nevada on July 31, 2001  
5 with Katzman as treasurer. Although Katzman believed that  
6 Leichner was president, there is some confusion as to Leichner's  
7 official involvement because the only document in evidence is the  
8 Westlaw report of Corporate Records and Business Registration,  
9 which shows Israel Schwartz (Leichner's son-in-law) as president  
10 and secretary and Katzman as treasurer. This report was updated  
11 on October 6, 2003 and I do not have evidence of the status  
12 before that time.<sup>4</sup> However, in testimony both Katzman and Moshe  
13 Leichner have represented that CFCI was a 50/50 joint venture or  
14 partnership between them. No one has raised the question of  
15 whether stock was issued and to whom.

16 In discussing the formation of CFCI, Katzman testified that  
17 when they decided to incorporate he went to the office of Michael  
18 Cardenas (Leichner's lawyer), who gave Katzman a certificate of  
19 the corporation which looked like a diploma and said that  
20 Leichner was president and Katzman was a trustee.<sup>5</sup>

21 To add to the confusion, Katzman testified later concerning  
22 the lease from Continental Air Care, Inc., stating that it was  
23 necessary since Sorrells (the sole officer of Continental Air  
24 Care, Inc.) was not an owner of CFCI. As will be discussed

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25  
26 <sup>4</sup> Request for Judicial Notice #2.

27 <sup>5</sup> Katzman testimony, 7/12/05.

1 later, the registered title to nine of the planes was in  
2 Continental Jet Management, Inc., a corporation owned by  
3 Leichner, but apparently not a partner with Katzman, or a  
4 shareholder, officer or director in CFCI. But Katzman testified  
5 that although CFCI could not fly planes without the written  
6 permission of the registered owner. A lease between CFCI and  
7 Continental Jet Management was not required because Leichner was  
8 part of Continental Jet Management and also part of the flight  
9 school.<sup>6</sup>

10 Even more confusion is created because on September 4, 2002,  
11 Katzman signed (as president of CFCI) the lease with Continental  
12 Air Care, Inc.<sup>7</sup> Given the state of the evidence presented in  
13 this case, it is impossible for me to make findings as to the  
14 composition or status of CFCI at incorporation or at any time  
15 thereafter.

16 Once incorporated, CFCI acquired the use of ten airplanes,  
17 each of which was registered with the FAA showing Continental Jet  
18 Management as the legal owner.

19 Continental Jet Management, Inc. was incorporated in Nevada  
20 on January 22, 2001. As of October 6, 2003, Moshe Leichner was  
21 president and secretary and Vered Leichner was treasurer.<sup>8</sup> All  
22 parties agree that Continental Jet was owned by Leichner.

23 Starting in the latter half of 2001, a series of nine planes

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24  
25 <sup>6</sup> *Id.*

26 <sup>7</sup> Exhibit 19.

27 <sup>8</sup> Request for Judicial Notice #2.



1 were purchased, each was registered with the FAA in the name of  
2 Continental Jet Management. Katzman placed the respective  
3 registration statement inside each of the nine planes.<sup>9</sup> There is  
4 no dispute that Leichner, directly or through his related  
5 entities (the "Leichner affiliates"), paid the full purchase  
6 price for six of the nine planes.<sup>10</sup> However, there remains a  
7 dispute as to payment for the other three planes.

8 On November 20, 2000, Continental Air Care, Inc. was  
9 incorporated in Nevada with Clyde D. Sorrells as president,  
10 secretary and treasurer.<sup>11</sup> Sorrells, who had sold EAL to  
11 Leichner, intended to start a medical airlift company. In  
12 September 2002, with Katzman's knowledge, Continental Jet  
13 transferred record ownership of the nine aircraft to CACI.  
14 Katzman made no written objection to this action. At about the  
15 same time as the transfer of registered ownership to CACI, CFCI  
16 (by Katzman) signed an aircraft lease with CACI to lease the nine  
17 aircraft to CFCI on a month-to-month basis. CFCI never paid any  
18 rent under the lease and the Trustee terminated the lease in  
19 October 2003.<sup>12</sup>

20 This bankruptcy began as an involuntary proceeding after the  
21 arrest of Moshe Leichner in February 2003. On May 16, 2003 the  
22 Court appointed an interim Trustee and on June 18, 2003 the order

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23  
24 <sup>9</sup> Stipulated Facts #1 and 4, Pretrial Order.

25 <sup>10</sup> Stipulated Facts #2, Pretrial Order. Also see Attachment 1 to this Memorandum.

26 <sup>11</sup> Request for Judicial Notice #2.

27 <sup>12</sup> Stipulated Facts #3, 5, 10 and 19, Pretrial Order.

1 for relief was entered.<sup>13</sup> Thereafter the Trustee received an  
2 assignment of the nine aircraft from Sorrells on behalf of CACI.  
3 The Trustee demanded that Katzman turn over the nine planes  
4 together with their maintenance records and logbooks, but this  
5 did not occur, and on May 20, 2004 the Court granted an order  
6 enjoining Katzman and CFCI from operating, transferring or  
7 encumbering the nine planes and the Beech Bonanza.<sup>14</sup>

8 From the time of purchase until the Trustee was granted the  
9 injunction, the nine planes were used by CFCI as part of its  
10 flight school and aircraft rental business. In February 2004,  
11 the 1977 Piper with tail number N4861F crashed. The insurance  
12 company issued a check for \$52,000 (payable to Continental Jet,  
13 CFCI, CACI, and possibly a fourth company) which Katzman alleges  
14 is still in his possession.<sup>15</sup>

15 Katzman and Midland Euro, Inc. jointly held title to the  
16 Beech Bonanza until less than one year before the bankruptcy was  
17 filed, when title was transferred by Leichner to Katzman as sole  
18 owner.<sup>16</sup> The Beech is in operating condition and was used by  
19 Katzman after the injunction, though such use has since ceased.  
20 The remaining eight of the nine aircraft have been disabled for  
21 movement (wheels, etc., have been removed) and are still at the  
22 hanger and facilities of CFCI at Van Nuys airport.

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23 <sup>13</sup> Stipulated Facts # 11, 12, 13 and 14, Pretrial Order.

24 <sup>14</sup> Stipulated Facts # 16, 18 and 23, Pretrial Order.

25 <sup>15</sup> Stipulated Facts # 20 and 21, Pretrial Order.

26 <sup>16</sup> Stipulated Facts # 9, Pretrial Order.

1                                   **B. Credibility**

2           Before applying the law, I must make findings on several  
3 facts which are not documented in writing, but rather are based  
4 on the credibility of one or more witnesses. These include (1)  
5 the terms of the involvement of Leichner and Katzman in CFCI; (2)  
6 the amount of money, if any, that Katzman paid for purchase of  
7 any of the nine planes or paid to Leichner in reimbursement for  
8 payment for the nine planes; (3) the amount of money that Katzman  
9 contributed to CFCI for insurance or other expenses; (4) the  
10 location of the logbooks for the eight surviving planes, the  
11 effect of their disappearance, and the decline in value of the  
12 planes due to their disappearance.

13           With the exception of the receipt for the two Israeli planes  
14 (discussed below), the written documents all support the  
15 Trustee's contention that Leichner entities paid for and owned  
16 the nine planes and 50% of the Beech and that CFCI had no  
17 ownership interest in the nine planes. Katzman disputes the  
18 Trustee's contention, claiming an interest based on payments that  
19 he alleges that he made to purchase these aircraft. However,  
20 there is no paper trail in support of Katzman's position.  
21 Katzman testified that all payments were made in cash and all  
22 agreements with Leichner were oral. Because of this lack of any  
23 written corroboration, I must determine whether Katzman's  
24 testimony is credible as well as the testimony of the witnesses  
25 who support him and whether this testimony outweighs the  
26 Trustee's documentary evidence.

1 "From the viewpoint of the Confrontation Clause, a witness  
2 under oath, subject to cross-examination, and whose demeanor can  
3 be observed by the trier of fact, is a reliable informant not  
4 only as to what he has seen but what he has heard."<sup>17</sup> Ultimately,  
5 the credibility of the witness is up to the trier of fact.<sup>18</sup>

6 [I]n this Circuit (as in others) the rule is that the trier  
7 of fact is at liberty within bounds of reason to reject  
8 entirely the uncontradicted testimony of a witness which  
9 does not produce conviction in his mind of the witness'  
10 testimony. This would be particularly true when the  
11 testimony comes from an interested party rather than a  
disinterested witness. Or, the demeanor of the witness may  
be controlling rather than his actual words 'the whole nexus  
of sense impressions' which one gets from a witness. Of  
course a judge may not reject uncontradicted evidence  
arbitrarily.<sup>19</sup>

12 Furthermore, "positive uncontroverted testimony may be rejected  
13 if it contains inherent improbabilities or contradictions, which  
14 alone, or in connection with other circumstances, tend to  
15 contradict it."<sup>20</sup>

16 In this case, the two principal witnesses to the payments  
17 and agreements are Katzman and Leichner, neither of whom is  
18 credible. Leichner is currently imprisoned for defrauding people  
19 out of close to \$100 million dollars. Katzman has made false  
20 statements or cooperated with the presentation of false  
21 statements throughout the existence of Continental Flight Center,  
22 Inc. His lack of truthfulness was particularly demonstrated at

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23 <sup>17</sup> *Dutton v. Evans*, 400 U.S. 74 (1970).

24 <sup>18</sup> *See Padilla v. Terhune*, 309 F.3d 614, 620 (9<sup>th</sup> Cir. 2002).

25 <sup>19</sup> *Joseph v. Donover Co.*, 261 F.2d 812, 824 (9<sup>th</sup> Cir. 1959).

26 <sup>20</sup> *White Glove Bldg. Maintenance, Inc. v. Brennan*, 518 F.2d 1271 (9<sup>th</sup> Cir. 1975).

1 trial concerning the purchase of the Israeli airplanes and the  
2 issue of the "stolen" logbooks. His testimony at trial lacks  
3 credibility and does not outweigh the documentary evidence  
4 presented by the Trustee.

### 6 **1. The Israeli Airplanes**

7 Katzman testified that he bought planes 555CV and 222CV as a  
8 private transaction in Israel. The issue is whether Katzman or  
9 Leichner/MEI paid for the planes and how much they cost.  
10 Although both Leichner and Katzman claim that Katzman (through  
11 his parents) paid for the planes, Arvel Jett Reeves, the former  
12 general manager or vice-president of EAL, testified in his  
13 deposition that Leichner told him that Leichner had bought two  
14 Cessnas in Israel.<sup>21</sup>

15 Between Katzman and his mother, the story was told that  
16 Katzman saw an ad by Joseph Uziel (referred to in testimony as  
17 "Yossi"), a commercial airline pilot and Katzman's uncle's  
18 neighbor. Katzman asked his parents to pay for the planes and  
19 Uziel went to Katzman's parents' house in Israel to receive the  
20 payment. Although Mrs. Katzman was somewhat confused about the  
21 exact time, later clarification established that this was in  
22 spring 2002. Katzman and his parents spoke by phone while Uziel  
23 was at the parents' home and Katzman instructed them to pay Uziel  
24 the money. Katzman's father took \$90,000 U.S. from the safe,  
25 giving it to Uziel, who prepared and handed Katzman's parents a

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26  
27 <sup>21</sup> Reeves deposition dated April 1, 2004, 78:6-79:22.

1 receipt. Mrs. Katzman saw the receipt at that time and  
2 positively identified Exhibit 1004 as the document that Uziel  
3 handed her that night.

4 Although it does raise questions as to why someone has that  
5 much cash in their safe (Mrs. Katzman testified to having large  
6 amounts in the safe at all times), there is no reason to  
7 disbelieve Mrs. Katzman that she kept large amounts of cash  
8 readily at hand. But it also means there is no paper trail. The  
9 only piece of paper that might support Katzman's contention that  
10 his parents paid \$90,000 for the two planes is the alleged  
11 receipt from Uziel, which is thus critical to proving Katzman's  
12 story of these events.

13 Although in her declaration (exhibit 1003) Mrs. Katzman  
14 never mentions a receipt, at trial Mrs. Katzman testified that  
15 she was given a receipt (Exhibit 1004) by Uziel when her husband  
16 paid him the money:

17 Schultz: Mrs. Katzman can you read English comfortably?

18 Dollinger (Translator for Mrs. Luba Katzman): Yes.

19 Schultz: Do you recognize that document?

20 Dollinger (Translator for Mrs. Luba Katzman): Yes.

21 Schultz: The document is signed by Yossi Uziel, is it  
22 not? Do you recognize that name?

23 Dollinger (Translator for Mrs. Luba Katzman): Yes.

24 Schultz: Do you remember the circumstances and did you  
25 receive this - I am sorry I started to ask you a bad  
question, let me ask you a better question. Did you  
receive this document from Mr. Uziel?

26 Dollinger (Translator for Mrs. Luba Katzman): Yes.

1 Schultz: Approximately can you tell from the document  
2 or do you have a recollection when that was?

3 Dollinger (Translator for Mrs. Luba Katzman): I don't  
4 have a clear recollection but we gave him the money  
5 before my husband passed away.<sup>22</sup>

6 . . .

7 Gumport: And when did your husband die Mrs. Katzman?

8 Dollinger (Translator for Mrs. Luba Katzman): On  
9 December 15, 2002.

10 Gumport: So close in time to December 15, 2002 you  
11 handed \$90,000 to Mr. Uziel, correct?

12 Dollinger (Translator for Mrs. Luba Katzman): Yes,  
13 perhaps a few months prior to this.

14 Gumport: And then Mr. Uziel gave you the receipt?

15 Dollinger (Translator for Mrs. Luba Katzman): Yes.  
16 Yes.<sup>23</sup>

17 Once Trustee's counsel Mr. Gumport pointed out that the  
18 receipt was dated in August 2003 and signed in September 2004,  
19 Mrs. Katzman's testimony became confused, though she still  
20 insisted that she had received the unsigned receipt in March 2002  
21 when her husband paid the money.

22 Gumport: Would you please read to the Court the date on  
23 the receipt.

24 Dollinger (Translator for Mrs. Luba Katzman): February  
25 17, 2004. But my husband was no longer alive.

26 Gumport: Well, does, is the date on the receipt  
27 accurate?

28 Dollinger (Translator for Mrs. Luba Katzman): According  
to this receipt it was in 2004 but we made the payment  
much earlier than that.

---

22 July 11, 2005, 3:19 p.m. Transcribed in chambers.

23 July 11, 2005, 3:43 p.m. Transcribed in chambers.

1 Gumport: So Mr. Uziel didn't give you the receipt when  
2 as you said you gave him \$90,000, correct?

3 Dollinger (Translator for Mrs. Luba Katzman): We did  
4 but it was not this date. We gave him the receipt, we  
gave us the receipt. But I was not aware of the date.

5 Gumport: Are you telling me that someone changed the  
6 date on that document that you testified was the  
receipt for the \$90,000 you gave to Mr. Uziel close in  
7 time to December 2002?

8 Dollinger (Translator for Mrs. Luba Katzman): I don't  
9 know. I don't know what to say about it. I don't know  
what to say about it. When he gave me the receipt there  
was no date. Yes.

10 Gumport: Isn't this a document that you had prepared  
11 after Mr. Katzman had been sued by the Trustee in 2003?

12 Schultz: Your Honor, I object to that question. There  
is no foundation for that.

13 Judge: Overruled.

14 Dollinger (Translator for Mrs. Luba Katzman): No, I did  
15 not prepare it.

16 Gumport: Do you know who prepared it?

17 Dollinger (Translator for Mrs. Luba Katzman): I  
received this from Uziel, from Yossi.

18 Gumport: In 2004?

19 Dollinger (Translator for Mrs. Luba Katzman): Yes it is  
20 possible. It is possible.

21 Gumport: Did you ask him to give you that receipt,  
Exhibit [1004]<sup>24</sup> in 2004?

22 Dollinger (Translator for Mrs. Luba Katzman): When  
23 Simon was having problems regarding [indecipherable]  
the airplane I contacted him.

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24 Because the Katzman parties had not pre-marked their exhibits and their exhibit list  
25 used the same numbers as those of the Trustee, I requested them to use numbers starting with  
26 1001. At this point in the trial, the receipt was not referred to by a consistent number. Later it  
27 was identified as Exhibit 1004.



1 Gumport: You contacted Mr. Uziel?

2 Dollinger (Translator for Mrs. Luba Katzman): Yes.

3 Gumport: And you asked him to give you a receipt in  
4 2004, is that correct? For an aircraft that you say  
5 you paid for in or about December 2002. Is that  
6 correct?

7 Dollinger (Translator for Mrs. Luba Katzman): Well,  
8 well when we met him for the first time  
9 and we gave him the money Simon made the phone call and  
10 it turned out that he is my brother's neighbor. And  
11 then he gave me this document and signed it.

12 Gumport: And that is in 2004?

13 Dollinger (Translator for Mrs. Luba Katzman): Yes.

14 Gumport: And, but you say you gave Mr. Uziel the money  
15 in or about December 2002, right?

16 Dollinger (Translator for Mrs. Luba Katzman): I am  
17 sorry your honor the interpreter has not been afforded  
18 the opportunity to complete the interpretation.

19 Judge: I am sorry so okay, so . . .

20 Dollinger (Translator for Mrs. Luba Katzman): Before  
21 the question, answer was given.

22 Judge: I am sorry, okay so complete the interpretation.

23 Dollinger (Translator for Mrs. Luba Katzman): What was  
24 the question?

25 Judge: We can play it back or you can ask it again.

26 Gumport: I am going to try and ask the same question  
27 again.

28 Judge: Part of the problem is that Mrs. Katzman really  
does understand English so she is tending to answer the  
question before the interpretation is through. So she  
really needs to wait. You will have to instruct her.

Dollinger (Translator for Mrs. Luba Katzman): Yes.

Gumport: When did Mr. Katzman make this phone call that  
you refer to?

Dollinger (Translator for Mrs. Luba Katzman): He called

1 me up saying that he entered into a deal with Uziel and  
2 he came to our house and he made a deal with him about  
3 two airplanes. And I don't know how the airplanes  
4 where kept.

5 Gumport: Do you know how the money was transferred to  
6 Mr. Uziel?

7 Dollinger (Translator for Mrs. Luba Katzman): We gave  
8 him cash money at home.

9 Gumport: Was it cash money in U.S. Dollars?

10 Dollinger (Translator for Mrs. Luba Katzman): Yes Yes.  
11 Yes.

12 Gumport: And was the name of Mr. Uziel's company Galit  
13 Aviation?

14 Dollinger (Translator for Mrs. Luba Katzman): I really  
15 can not say.

16 Gumport: If I may approach Your Honor.

17 Judge: Okay.

18 Gumport: Mrs. Katzman do you see on Exhibit [1004] the  
19 letter that you say is Mr. Uziel's receipt is on the  
20 letterhead of a company called Galit Aviation?

21 Dollinger (Translator for Mrs. Luba Katzman): Yes, I  
22 can see it here but I did not know that the name of the  
23 company was Galit Aviation.<sup>25</sup>

24 In his testimony, Katzman first tried to rehabilitate his  
25 mother, claiming that she had received the signed receipt when  
26 the money was allegedly transferred in March 2002. But he  
27 finally admitted that the receipt was only created at his behest  
28 at a later date for purposes of this litigation:

29 Schultz: This is the document that Simon's mother had  
30 yesterday. Do you recognize some or all of those  
31 documents Mr. Katzman?

32 Katzman: Yes I can.

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33 <sup>25</sup> July 11, 2005, 3:51 p.m. Transcribed in chambers.

1 Schultz: The first page says Galit Aviation on it. We  
2 talked at some length yesterday about the different  
3 dates that are on the face of that page. Do you have  
4 any knowledge of the dates that are on the face of that  
5 page?

6 Katzman: Yes, when I got the airplanes here in  
7 2001/2002 I didn't have a receipt from Yossi, probably  
8 my Mom have the receipt in Israel. She - I never got  
9 nothing from my Mom. She just paid the airplane. The  
10 airplane came to Los Angeles harbor, and that's it.  
11 Then when Yaspan -- Mr. Yaspan was my lawyer and on  
12 one occasion even Yossi, even Yossi Uziel, came to  
13 Yaspan's office to testify that "yes he had sold me the  
14 airplane." But Mr. Yaspan said you had to testify  
15 under oath. Under oath means if the guy is coming to  
16 the United States, is an airline pilot, and somebody is  
17 going to serve him a subpoena so he has to come to the  
18 Court. And I didn't want to do it to him. He is a  
19 friend of mine, who sold me the airplane. Now we have  
20 to go through all the rubicon that happened with Moshe  
21 that sucked me all the way inside without my my you  
22 know -- I was very mad that I'm in this situation. So  
23 he came to Yaspan's office and testified in front of  
24 Yaspan, not under oath, that he sold me the airplane  
25 and my Mother and Father paid the money. I didn't have  
26 a receipt. Mr. Yaspan months and months after told me,  
27 "Simon I need something from Mr. Uziel." So I called  
28 Mr. Uziel and I asked him, "Yossi can you send me a  
receipt something that I bought the airplane from you?"  
So that's what I got. I have the receipt here dated 23  
in August. I don't remember when was, but I remember  
it was like a year after I bought the airplane. He sent  
me an invoice - this is Yossi Uziel fax number and he  
sent it to me I don't remember if Mr. Yaspan or  
returned to my office and he just put you in your same  
name and everything but different on the dates. But it  
says that this letter went out on 23 of August but it  
really was done exactly on March 2002. But he signed  
it, you know. Probably my Mom saw the same papers  
signed by her but she never gave me the papers. I  
don't know if she had the papers in Israel. That is  
the issue with the dates right here. Yes, I called  
Yossi like a year after. "Yossi, you know I am going to  
Court and I don't have nothing to prove. I need  
something that you let me know." And he didn't even  
want to to - in Israel everybody does bad business  
with cash money. I never got into a cash money business  
here. I did it the hard way. Everybody -- nobody  
knows what the other one -- everyone wants cash money  
under the table for everything. So he didn't even put

1 the amount of money that I in. And I put in \$90,000  
2 for those two airplanes. So he just said that he sold  
3 the airplane and imagine an airplane like this for  
4 \$40,000 is the right price \$45,000. I have here the  
5 original estimate some place, the brochure how much he  
6 wants for the airplane. He wants for the airplane I  
7 think \$98,000. So I brought him down to \$90,000. And  
8 I believe, I believe, I don't remember. I believe he  
9 sent me those airplanes here to the United States with  
10 some parts. Some parts on the airplane that I didn't  
11 even pay for them. I do not know who paid for them.  
12 The container came with extra parts in it. I was  
supposed to get some extra parts but, yes but then I  
saw a lot of parts that did. You know I don't know who  
picked up the parts. The parts still now are at the  
EAL office. I never picked up those parts. I never  
picked up those parts only the airplanes. The parts  
are still at EAL office. Some receipts I don't know  
what it was. Yes, they came like a year after. I  
called Yossi and I told him, "Yossi I told him I need a  
receipt or something." So right away he faxed it to  
me. He put it in to his computer. He put the date he  
wrote this letter to me.

13 Schultz: The actual letter recites the date of March  
14 2002. Is that approximately to your recollection  
approximately when the \$90,000 transaction occurred?

15 Katzman: Yes. Yes, I don't remember exactly the date  
16 but that was the month, yes<sup>26</sup>

17 In his attempt to rehabilitate his mother's testimony,  
18 Katzman asserted that she may have received an earlier copy of  
19 the receipt, and when that could not be supported, he stated  
20 under oath that his mother does not read English:

21 Schultz: And then aside from what you have told us do  
22 you have any other information as to why there would be  
an August 2003 date on the top of the letter?

23 Katzman: Because I did not have received it yet and I  
24 am here and my Mom is in Israel. I did not bother to  
25 call my Mom to give her the original paper. I didn't  
know if she had it, the original paper. I had assumed  
she had. She had the original receipt with the  
signature of Yossi. So she can recognize it. She

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26  
27 <sup>26</sup> July 12, 2005, 5:17 p.m, Transcribed in chambers.

1 looked at it and she doesn't read English anyway and  
2 she said "Yes I recognize Yossi's signature." But this  
3 paper I got it from Yossi not my Mom. And this paper  
4 came like a year after because Mr. Yaspan told me, "I  
5 don't have any record that you bought the aircraft."  
6 So I called Yossi Uziel in Israel and told him, "Yossi  
7 just send me a paper with the price that I paid you and  
8 everything." He said, "Well I will send you a paper  
9 without the price, I don't want to know." He is a  
10 veteran of the Israeli Air Force.<sup>27</sup>

11 However, as shown above, when Mrs. Katzman had earlier  
12 testified through an interpreter, she said in response to  
13 Katzman's attorney:

14 Schultz: Mrs. Katzman, can you read English  
15 comfortably?

16 Dollinger (Translator for Mrs. Luba Katzman): Yes.<sup>28</sup>

17 I find that Katzman gave false testimony about this receipt  
18 and has damaged or even destroyed his credibility. His attempt  
19 to allege that his mother had a signed or unsigned copy of the  
20 receipt (Exhibit 1004) but that he never asked her for it makes  
21 no sense, primarily because of the difficulty in getting Uziel to  
22 prepare and sign Exhibit 1004. Further, because Exhibit 1004 has  
23 the August 2003 date typed into the body of the document, it  
24 could not have been created and given to Katzman's parents in  
25 March 2002.

26 As to Mrs. Katzman's testimony, it is possible that she  
27 simply doesn't remember enough of the details of the transaction  
28 to competently testify to them. However, she did testify in such

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<sup>27</sup> July 12, 2005, 5:23:36 p.m. Transcribed in chambers.

<sup>28</sup> July 11, 2005, 3:19 p.m. Transcribed in chambers.

1 a way that it is clear that she intended me to find that her  
2 husband gave Uziel \$90,000 cash in her presence and that he  
3 received Exhibit 1004 at that time. She also testified that she  
4 recognized Uziel's signature on the receipt, though this was the  
5 only time that she had met him and the only time that she had any  
6 dealings with him.<sup>29</sup> Whether as a lie or as a lapse of memory,  
7 I can not give sufficient credibility to her testimony to use it  
8 to overcome the documentary evidence which shows these planes  
9 registered in the names of Continental Jet Management.

10 Further, there is a question of whether the planes cost  
11 \$60,000 rather than \$90,000. The receipt [Exhibit 1001] does not  
12 show an amount, but a letter signed by Katzman to Fritz Companies  
13 authorizing them to pick up the planes upon arrival at the Los  
14 Angeles harbor (dated April 23, 2002) states that the total value  
15 of the shipment is \$60,000.<sup>30</sup> When asked to clarify the  
16 discrepancy between the \$60,000 figure and the \$90,000 that he  
17 asserted was paid for the planes, Katzman - once again -- gave a  
18 series of conflicting explanations which reflect badly on both  
19 his credibility and his general truthfulness. Initially he  
20 testified that he thought the \$60,000 was for insurance purposes.  
21 Then he said that Uziel gave him the \$60,000 figure and he put it  
22 on the authorization letter. Then he indicated that \$60,000 was  
23 the true value of the planes, since he had overpaid because they  
24 were in very bad shape. Then he stated that "I think this

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25  
26 <sup>29</sup> Luba Katzman testimony, July 11, 2005.

27 <sup>30</sup> Exhibit 1010.

1 [Exhibit 1010] is what Yossi prepared over there and probably I  
2 signed it. I don't care."<sup>31</sup>

3 I need not try to intuit the real reason for the \$60,000  
4 figure - whether to underinsure the planes, support Uziel in  
5 understating the amount of money received, or reflect the true  
6 sum paid for the planes. But as to credibility, it is important  
7 to note that these are mutually exclusive explanations and that  
8 when faced with a written document which conflicts with his oral  
9 testimony, Katzman again makes the unbelievable statement that  
10 Uziel prepared it even though it is on CFCI letterhead and there  
11 is no reason for Uziel to have drafted it.

## 12 13 **2. The Stolen Logbooks**

14 Katzman testified that about a month before the hearing on  
15 the preliminary injunction to prevent him from using these  
16 airplanes, the logbooks for all ten airplanes were stolen from  
17 his jeep and that he gave a police report which supports his  
18 version of this incident. Two copies/versions of the police  
19 report were turned over to the Trustee in discovery and a lot of  
20 trial time was spent looking at the differences between them.  
21 The Trustee focused on the addition of the word "logbooks" to the  
22 1 page version that was provided to him in November 2004 (the  
23 "initial report"), though it was not on the 2 page version faxed  
24  
25

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26 <sup>31</sup> Katzman testimony, July 13, 2005. Quote from July 13, 2005, 5:04 p.m. Transcribed  
27 in chambers.

1 to Trustee's counsel in January 2005 (the "complete report").<sup>32</sup>  
2 The Trustee testified that it is obvious that the word "logbooks"  
3 was written by a different person on the initial report. It is  
4 not obvious to me and I am in as good a position as the Trustee  
5 to make the decision, as neither of us are handwriting experts.

6 Katzman explains the difference by recounting that he  
7 returned to the station immediately after he gave the report and  
8 told the officer that he had left off the word "logbooks," so the  
9 officer added it by pencil and gave him back his copy. I accept  
10 Katzman's version that the police officer added this in pencil on  
11 his copy, which explains why it is not on the complete version of  
12 the report that was later sent over and why it is darker than the  
13 other handwritten text. It also makes sense that Katzman would  
14 want the report to specify "logbooks" as that was the whole  
15 purpose of making the report. The Trustee also focused on page 2  
16 of the complete report because it only speaks of 2 logbooks and  
17 not 2 boxes of logbooks. Katzman's counsel tried to support his  
18 client by showing all the other discrepancies between the two  
19 reports.

20 In reviewing these police reports, everybody is truly  
21 missing the forest for the trees. It is clear to me that the  
22 complete report took the initial report and added a typed page,  
23 which was prepared later, and that several weeks after the report  
24 was made by Katzman, it was reviewed by a supervising officer.  
25 The various other numbers and indications that were added were

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26  
27 <sup>32</sup> Exhibit 43.



1 done in the police department after the initial report was taken.  
2 The difference in value from \$1,000 to \$1,500 was probably done  
3 to equate the front part of the report with the total that was on  
4 the typewritten page. So although many questions were asked on  
5 both sides about this, I find no wrongdoing by Katzman because  
6 of the two different versions of the report.

7 However that does not mean that I find that the logbooks  
8 where stolen. In fact the reports corroborate that Katzman is  
9 not credible.

10 Katzman testified at the trial that he had the logbooks in  
11 the back of his car when he stopped at the Ralphs market to meet  
12 a friend for lunch. He said that he went in and they ate lunch  
13 in the food court area and when he left he found that the soft  
14 top on his jeep had been slit and the items inside the car had  
15 been taken, including the boxes of logbooks:<sup>33</sup>

16 Gumport: Mr. Katzman did you lose the logbooks for all  
17 10 of the aircraft that you claim are yours?

18 Katzman: I did not lose it. They where stolen from me.  
19 So you can say I lost it; they were stole from me.

20 Gumport: Did they get stolen from you?

21 Katzman: Yes Sir.

22 Gumport: The logbooks for all 10 of the aircraft that  
23 you say are yours?

24 Katzman: For all 10 of the aircraft the logbooks were  
25 stolen.

26 . . . .

---

27 <sup>33</sup> The police report (Exhibit 43) also included a hand-held radio valued at \$500. It is not  
28 clear whether this was the kind used in one of the airplanes.

1 Gumport : And do you remember when they where stolen?

2 Katzman : I don't remember exactly the date, I don't  
3 remember exactly the date, I can't recall.

4 Gumport : Well where were the logbooks when at least  
5 twenty of them were stolen from you?

6 Katzman : The logbooks was in my jeep; I used to have a  
7 jeep with a soft top. I drove it, I drove it - the  
8 logbook was in my house. I took the logbooks from my  
9 house to the airport and I did not have a cabinet to  
10 put it in. Then I bought a cabinet and I want to put  
11 the logbooks in the cabinet in the airport and I  
12 brought it from my house. And when I stop at the  
13 Ralphs market, at the Ralphs market and I have to meet  
14 a friend of mine for it was lunch time I guess. I park  
15 my jeep outside the Ralphs market. I went to the Ralphs  
16 market -- we bought some lunch over there at the salad  
17 bar - and when I came out somebody cut my top. It was  
18 a new jeep with a soft top. They cut my top and they  
19 stole my headset, they stole a leather jacket and then  
20 I find out they stole something else and they stole  
21 boxes of - some boxes - the old books that I have in  
22 those airplanes like two boxes whatever we have here,  
23 right there, it is not a lot of volume of boxes. It is  
24 like boxes we to put our [unintelligible] here like in the bench over

25 The police report, given at 10:30 a.m. on April 14, 2004  
26 undermines Katzman's entire story:

27 "Victim stated that on 4-14-04 at approximately 1000  
28 hrs he parked his vehicle in the parking lot located at  
the S/E corner of Devonshire and Balboa. He exited his  
vehicle and walked into Ralphs Supermarket (victim did  
not lock his vehicle). The victim returned to his  
vehicle approximately 5 minutes later and noticed his  
passenger side door open. When he entered his vehicle  
he noticed the property missing."<sup>35</sup>

29 This totally contradicts Katzman's testimony at trial that  
30 he stopped at Ralphs for lunch with a friend [which certainly was  
31 later than 10:00 a.m. and took more than 5 minutes] and that his

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32 <sup>34</sup> July 13, 2005, 5:39 p.m. Transcribed in chambers.

33 <sup>35</sup> Exhibit 43, page 2 of "complete report."

1 soft-top was slashed by the thief in order to gain entrance to  
2 the car. His assertion that the logbooks where stolen from his  
3 car is thus discredited by his own conflicting words.

4 Further, as to Katzman's testimony that he kept the logbooks  
5 at home because he did not have a cabinet at the office at CFCI,  
6 he is discredited by the testimony of Shay Oved, who worked at  
7 CFCI from the beginning and has visited it throughout:

8 Judge: When the logbooks where kept in the office where  
9 were they physically kept?

10 Oved: Um that would be in Simon's office -- again it's  
11 the whole office is one unit that was in Simon's  
12 office.

13 Judge: Were they laid out on a desk or file cabinet?

14 Oved: No, there was a file that you could open and pull  
15 out of there.

16 Judge: A file cabinet?

17 Oved: Yes.

18 Judge: When did you get that?

19 Oved: The what?

20 Judge: The file cabinet.

21 Oved: When would he ...

22 Judge: Was it there when you went to work for the --

23 Oved: Oh. Yes.

24 Judge: It was there all the way through?

25 Oved: Yes.<sup>36</sup>

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26 <sup>36</sup> July 14, 2004, 4:50 p.m. Transcript prepared in chambers. Several weeks after the  
27 trial ended, Katzman arrived at court with four blank logbooks what he stated were that kind that  
28 were stolen. I later asked the Trustee whether he would agree to allow these in to evidence, but  
he refused as he had no way of knowing if these truly were similar to the lost logbooks.

1 After hearing Oved contradict his statement that he kept the  
2 logbooks at home because he had no cabinet in his office, Katzman  
3 changed his story and testified that he kept the logbooks at home  
4 because it was not safe to keep them in the hanger or in the  
5 planes at CFCI as people were breaking in to take radios:  
6

7 Gumport: Is it your testimony that the next month you  
8 took all of the logbooks out of the office and put them  
9 in your jeep, is that right?

10 Katzman: I took those logbooks from my house to the  
11 jeep to bring it to the airport. In this time that I  
12 was talking to you, the logbooks were in my house not in  
13 the facility. I kept it over there for purposes of the  
14 alarm going on in the airport -- lots of stealing  
15 airplanes over there, stealing radios -- my hanger does  
16 not secure right. Everybody can go to the hanger. Mr.  
17 Cary Baxter does not fix the doors over there. So most  
18 of the time the aircraft books, the logbooks, my  
19 personal maintenance books are kept in my house. When I  
20 know the maintenance is coming in I bring the book, the  
21 specific book inside. But most of the time the book is  
22 kept in my house. Same day that the books got stolen I  
23 brought all of them to be reviewed by my mechanic to the  
24 airport. But I didn't put it in the airport it was in  
25 my jeep and I went to lunch and they got stolen.<sup>37</sup>

26 And as to Katzman's contention that radios were being stolen  
27 at the airport, Robert Chipperfield, a regular user of Van Nuys  
28 Airport and owner of a plane stored there, testified that the  
29 best radios had been removed from the 9 planes, but said that he  
30 has not heard of radios being stolen at the airport as most of

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31 However, for purposes of finding credibility of Katzman as to what storage was needed, the  
32 logbooks are between 4" tall by 7 1/4" long to 5 1/2" tall by 7 1/2" long. They are each about 1/4"  
33 thick. Thus, for 11 airplanes, even if there were 6 logbooks per plane (a current one and a  
34 completed one for the engine, mainframe, and propeller), the total volume would not exceed 17"  
35 in length and 5 1/2" in height, and they could easily fit in one or two desk or cabinet drawers.

36 <sup>37</sup> July 14, 2005, 5:07 p.m. Transcribed in chambers.

the aircraft are locked.

Given these inconsistencies, the timing of the alleged theft of the logbooks is also highly suspicious. On March 9, 2004, the Trustee deposed Mr. Katzman and asked about the logbooks. Katzman said they were available for review but could not be taken from the office. He never mentioned that they were at home.<sup>38</sup> On April 2, the Trustee filed a motion for shortened time for a hearing on a motion for turnover of the registration certificates for the planes and on April 14 the logbooks were "stolen." It was clear to Katzman that the Trustee was moving toward possessing (and possibly selling) the planes. The "theft" of the logbooks could - and did -- stop that cold in its tracks.

I find that the logbooks were not stolen but were hidden so that the Trustee could not take possession and sell the planes. I find that Katzman filed a false police report for the purpose of denying the Trustee the ability to sell the planes, thereby taking control of property of the estate and violating the automatic stay. I further find that Katzman's testimony cannot be relied on for purposes of disputing the written evidence presented to the court by the Trustee.

Given Katzman's lack of credibility, I give little if any weight to his uncorroborated testimony. Thus, to the extent that the countervailing evidence is based on Katzman's testimony or that of his mother, I must rule in favor of the Trustee. To the extent that the Katzman parties rely on the testimony of

<sup>38</sup> Deposition of Simon Katzman, March 9, 2004, 19:6-20:9.

1   Leichner, his conviction for fraud is sufficient to impeach any  
2   evidence presented by him.<sup>39</sup>

### 4                                   **III. ISSUES OF LAW**

5           According to the Pretrial Order, there are eight issues of  
6   law which must be determined in this case. Each is discussed  
7   below. The First Amended Complaint filed by Katzman and CFCI  
8   asks for a determination of ownership of the nine planes in CFCI,  
9   an accounting of money that Katzman paid on behalf of the joint  
10   venture including \$57,831.84 allegedly held by EAL, a declaration  
11   concerning the transfer to CACI, and an injunction against the  
12   Trustee to prevent him from taking possession of the planes.  
13   These seem to have been rolled into the eight issues in that I am  
14   generally required to find whether Katzman or CFCI had an  
15   interest in the nine airplanes. I find that they did not.

#### 17                   **A. Whether there were Fraudulent Transfers**

18           A series of transfers are in contention. As to the nine  
19   planes, any transfer from Leichner/Continental Jet to CFCI is  
20   disputed by the Trustee while the transfer from CACI to the  
21   Trustee is raised by Katzman. The Trustee also wishes to set  
22   aside the transfer of MEI's 50% interest in the Beech Bonanza to  
23   Katzman. While the parties divide this into two questions  
24   (intentionally fraudulent transfers and constructively fraudulent  
25   transfers), it is better to deal consecutively with each transfer

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27                   <sup>39</sup> Federal Rules of Evidence 609.

1 rather than with each theory.

2 The controlling statutes are as follows:

3 11 USC § 548:

4 (a)(1) The Trustee may avoid any transfer of an  
5 interest of the debtor in property, or any obligation  
6 incurred by the debtor, that was made or incurred on or  
7 within one year before the date of the filing of the  
8 petition, if the debtor voluntarily or involuntarily—

9 (A) made such transfer or incurred such obligation  
10 with actual intent to hinder, delay, or defraud any  
11 entity to which the debtor was or became, on or after  
12 the date that such transfer was made or such obligation  
13 was incurred, indebted; or

14 (B) (i) received less than a reasonably  
15 equivalent value in exchange for such  
16 transfer or obligation; and  
17 (ii) (I) was insolvent on the date that  
18 such transfer was made or such  
19 obligation was incurred, or became  
20 insolvent as a result of such transfer  
21 or obligation;

22 (II) was engaged in business  
23 or a transaction, or was about  
24 to engage in business or a  
25 transaction, for which any  
26 property remaining with the  
27 debtor was an unreasonably  
28 small capital; or  
29 III) intended to incur, or  
30 believed that the debtor would  
31 incur, debts that would be  
32 beyond the debtor's ability to  
33 pay as such debts matured.

34 Cal. Civ. Code § 3439.04:

35 A transfer made or obligation incurred by a debtor is  
36 fraudulent as to a creditor, whether the creditor's  
37 claim arose before or after the transfer was made or  
38 the obligation was incurred, if the debtor made the  
39 transfer or incurred the obligation as follows:

40 (a) With actual intent to hinder, delay, or  
41 defraud any creditor of the debtor.

42 (b) Without receiving a reasonably equivalent  
43 value in exchange for the transfer or  
44 obligation, and the debtor either:

45 (1) Was engaged or was about to  
46 engage in a business or a  
47 transaction for which the remaining  
48 assets of the debtor were

1                   unreasonably small in relation to  
2                   the business or transaction.  
3                   (2) Intended to incur, or believed  
4                   or reasonably should have believed  
5                   that he or she would incur, debts  
6                   beyond his or her ability to pay as  
7                   they became due.<sup>40</sup>

8                   The first step in deciding the fraudulent transfer issues is  
9                   to determine who owns the airplanes.

## 10                   **1. Who Owns the Airplanes**

### 11                   **a. The Beech Bonanza**

12                   There is no question that Katzman held full title to the  
13                   Beech Bonanza at the time that this bankruptcy case was filed.  
14                   The issue is whether the transfer of MEI's 50% interest to him  
15                   constitutes an actual fraudulent transfer. This is discussed  
16                   below.

### 17                   **b. The Nine Planes**

#### 18                   **(1). Does Katzman Have a Direct Interest?**

19                   It is particularly interesting that Katzman did all of his  
20                   asserted transactions in cash and without any receipts or other  
21                   paper trail. In fact he has not even provided evidence that he  
22                   declared the large sums of money that he (and his mother) assert  
23                   were brought into the country from Israel. According to the U.S.  
24                   Customs Service, an American citizen or visitor to the United

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25                   <sup>40</sup> Cal. Civ Code §3439.04 was amended effective January 1, 2005 to renumber the  
26                   subsections and to include a new subsection which the legislature stated is not new law, but is  
27                   merely declaratory of existing law. Although not operative in this case, even considering this  
28                   list, I find that no intentional fraudulent transfer occurred.



1 States must declare any amount in excess of \$10,000 that s/he  
2 brings into the country.<sup>41</sup> Katzman testified that he went to  
3 Israel in November 2002 and brought back over \$50,000 in cash  
4 given him by his father, which he used to pay for the Seneca  
5 (83DA). He asserted that on a previous occasion he also brought  
6 back over \$50,000. Yet he never obtained copies of his customs  
7 declarations to support this testimony.<sup>42</sup>

8 The fact that he contends he paid well over \$200,000 in cash  
9 for the various planes is ironic, given his testimony (cited  
10 above): "In Israel everybody does bad business with cash money. I  
11 never got into a cash money business here. I did it the hard  
12 way."<sup>43</sup> CFCI had no books of account, Katzman had no receipts;  
13 he did everything as a "cash money business." And Katzman knew  
14 that this was "bad business."

15 To the extent that Katzman wants me to rely on Leichner's  
16 testimony that Katzman paid for part of the planes, Leichner also  
17 testified that the planes were registered in CFCI,<sup>44</sup> which is  
18 untrue. Further, Leichner's testimony is impeached by the  
19 deposition testimony of Arvel Jett Reeves that Leichner  
20 complained to Reeves that Leichner paid for the renovation of the  
21

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22 <sup>41</sup> <http://www.customs.ustreas.gov/xp/cgov/travel/vacation/kbyg/money.xml> (8/9/05).

23 <sup>42</sup> Luba Katzman testified to sending Katzman money via relatives and to bringing large  
24 amounts of money on each of her trips (she made 4 or 5 trips in the last 5 years). She estimated  
25 that during the last 5 years she gave Katzman about \$285,000 beyond the \$115,000 she paid for  
the three planes.

26 <sup>43</sup> July 12, 2005, 5:17 p.m.

27 <sup>44</sup> Deposition of Moshe Leichner, November 6, 2002, Vol. I, 56:4-7.

1 CFCI office, the gas, the rent, and that "he gave Simon all these  
2 airplanes to use" but the flight school was not making any  
3 money.<sup>45</sup>

4 The nine planes were registered to Continental Jet  
5 Management, Inc., which was a shell corporation for EAL when  
6 Leichner broke EAL into three corporate entities to protect it.<sup>46</sup>  
7 Continental Jet did no business, but held title to these nine  
8 planes and others.<sup>47</sup> Leichner had his various aircraft  
9 acquisitions held by Continental Jet to show lenders that he  
10 owned these planes. Thus, all planes acquired by Leichner, with  
11 the exception of two aircraft, were titled to Continental Jet.<sup>48</sup>  
12 Katzman had no interest in Continental Jet.

13 Since there is no proof to overcome the Trustee's  
14 documentation and as Katzman's and Leichner's testimony lack  
15 credibility, I find that Leichner entities paid for all nine  
16 planes and that Katzman has no direct interest in any of them.  
17 Katzman's only interest could be through CFCI - if CFCI has an  
18 interest.

19  
20 **(2). What is CFCI and Does it Own the Nine Planes?**

21 CFCI is a Nevada corporation, but as noted above it is  
22 unclear who are the shareholders. It had no meetings, no books  
23

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24 <sup>45</sup> Deposition of Arvel Jett Reeves, April 1, 2004, 95:4-96:19; 99:6-13.

25 <sup>46</sup> As noted below, this is not a legal finding since EAL was never served.

26 <sup>47</sup> Deposition of Arvel Jett Reeves, April 1, 2004, 136:12-20.

27 <sup>48</sup> Testimony of Todd Citron, July 13, 2005.

1 and records, and Leichner and Katzman both spoke of themselves as  
2 "partners" (Leichner also spoke of a "joint venture"). It  
3 appears that CFCI is a mere shell and the real relationship is a  
4 joint venture or a partnership between Katzman and Leichner, and  
5 I will treat it as such. But that does not give Katzman or CFCI  
6 a 50% ownership in planes title to Continental Jet.

7 Katzman argues that even though title was held in the name  
8 of Continental Jet, the planes may still be property of the  
9 partnership. This is true in the case of real property<sup>49</sup> when  
10 (1) the property is in the name of one of the general partners;<sup>50</sup>  
11 (2) it is the understanding and intention of the partners that it  
12 is partnership property;<sup>51</sup> and (3) the court ascertains this from  
13 the conduct or the course of dealings of the partners.<sup>52</sup> Even if  
14 I extend this to personalty and decide that though title to the  
15 nine planes was held in the name of Continental Jet they really  
16 belonged to Leichner, the conduct of the partners and their  
17 course of dealings do not support a factual finding of intent on  
18 Leichner's part to contribute the planes to the partnership,  
19 since Leichner continued to treat the planes as his own and  
20 Katzman actively cooperated with him.

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21  
22 <sup>49</sup> Cal. Corp. Code § 15010(4) and the cases cited by Katzman all deal with real property  
23 transfers.

24 <sup>50</sup> *In re Wingo*, 89 B.R. 54, 57 (9<sup>th</sup> Cir. BAP 1988).

25 <sup>51</sup> *In re Fair Oaks, Ltd.*, 168 B.R. 397, 402 (9<sup>th</sup> Cir. BAP 1994).

26 <sup>52</sup> *Perelli-Minetti v. Lawson*, 205 Cal. 642, 648 (1928), cited in *In re Fair Oaks, Ltd.*, 168  
27 B.R. 397, 402 (9<sup>th</sup> Cir. BAP 1994).

1 First the planes were registered in the name of Continental  
2 Jet.<sup>53</sup> Then, without protest from Katzman, Leichner transferred  
3 them to CACI. The parties' understanding that neither Katzman  
4 nor CFCI had an interest in the nine planes is particularly  
5 obvious, since Katzman protested the transfer of "his plane" (the  
6 Beech Bonanza) to CACI (and that was set aside by CACI and  
7 Leichner), but made no such demand as to the nine planes.

8 The transfer to CACI would not yield any benefit to Katzman  
9 or CFCI - the sole parties who could profit from this were  
10 Sorrells and Leichner. Leichner was investing in CACI, a  
11 corporation created by Sorrells to conduct a medical airlift  
12 business. Sorrells had talked to Leichner about investing, but  
13 instead of money, Leichner transferred the nine planes so that  
14 CACI could show them on their balance sheet to borrow money  
15 against the stock of CACI. Katzman knew of this deal from  
16 Leichner. To the extent that Katzman believed that the planes  
17 belonged to CFCI, he was a willing participant in a scheme to  
18 defraud potential lenders to CACI, who were to be led to believe  
19  
20  
21

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22 <sup>53</sup> In his First Amended Complaint (¶¶ 16, 17) Katzman alleges, " At the inception of the  
23 Joint Venture MOSHE and SIMON agreed that any aircraft purchased for CFC to operate, would  
24 bear the name of CFC as the registered owner of the airplanes." He goes on to list the planes  
25 that "MOSHE and SIMON each individually purchased . . . for use by CFC." Although I don't  
26 find this to be dispositive of the issue as the complaint is not signed by Katzman, his attorney  
27 (presumably with the knowledge and consent of Katzman) seems to admit that since the planes  
28 were registered in the name of Continental Jet they were not purchased for CFC and that  
Leichner and Katzman each owned all or part of the planes individually and were providing them  
to CFC for its use, not as a contribution of ownership to the partnership.

1 that CACI owned the planes free and clear of all other claims.<sup>54</sup>

2 Katzman and Sorrells also discussed the transfer, as  
3 Sorrells wanted to make sure that the planes had insurance and  
4 were in working condition. Katzman never indicated to Sorrells  
5 that anyone other than Continental Jet had an interest in the  
6 planes. And when the new registrations came showing that CACI  
7 was the owner, Sorrells gave them to Katzman to put in the  
8 planes. Katzman accepted them without protest and displayed them  
9 in the planes.<sup>55</sup> Katzman also notified the insurance company to  
10 add CACI to the policy.<sup>56</sup>

11 There was no transfer of interest from Leichner/Continental  
12 Jet to CFCI. Leichner allowed CFCI to use the planes, but  
13 ownership remained in Continental Jet.

14 /

15 /

16 /

17 /

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23 <sup>54</sup> To the extent that Katzman would have me do equity as to the transfer of these planes  
24 to CACI, the equitable doctrine of unclean hands applies since he cooperated with the transfer  
25 knowing that it would be used to defraud the lenders of CACI.

26 <sup>55</sup> Exhibit 24-32; Katzman testimony that he had to obtain a lease from CACI because  
27 the registration was now in that entity (July 12, 2005).

28 <sup>56</sup> Katzman testimony, 7/12/05.

1                   **2. Were Any Transfers Fraudulent?**

2           **a. Transfer of the Nine Planes from Continental Jet to CFCI**

3           As to the nine planes, they never belonged to CFCI and thus  
4 no transfer was made.

5  
6           **b. Transfer of the Beech Bonanza to Katzman**

7           The Beech Bonanza was purchased on June 17, 1999 and  
8 registered to Midland Euro, Inc. and Katzman in March 2000.  
9 Midland Euro, Inc. (by Moshe Leichner, president) and Simon  
10 Katzman, as co-owners of the Beech, signed a Bill of Sale  
11 transferring it to CACI (filed 9/6/02, recorded 9/23/02). This  
12 was set aside a few days later (filed 9/12/02, recorded 9/23/02)  
13 and at that same time Leichner (as president of Midland Euro,  
14 Inc.) and Katzman (as co-owner of the Beech) executed a Bill of  
15 Sale transferring the plane to Katzman (filed 9/12/02, recorded  
16 9/23/02).<sup>57</sup>

17           Katzman testified that Leichner had paid \$57,000 for this  
18 plane in 1999 and that about a month later Katzman reimbursed  
19 Leichner in the amount of \$25,000, while in 2000 his mother paid  
20 another \$25,000 to Leichner. Mrs. Katzman confirms the second  
21 payment to Leichner, which she testified was in cash at her home  
22 in Israel and for which there is no receipt. Katzman further  
23

24  
25           <sup>57</sup> Exhibit 33, page 224 is the Aircraft Registration Application signed by Sorrells on  
26 behalf of CACI on September 5, 2002; the Aircraft Bill of Sale to CACI was filed with the FAA  
27 on September 6, 2002 (pp. 226-7). This was set aside on September 12, 2002 (again with  
Katzman and Midland Euro, Inc. signing as co-owners) (pp. 222-3). On September 23, 2002,  
the Bill of Sale from Katzman and MEI to Katzman was registered by the FAA (p. 218).

1 testified that he did not pay Leichner the remaining \$7,000 as he  
2 had done about \$10,000 in repairs and cosmetic things - though  
3 his testimony is unclear as to whether these were on the Bonanza  
4 or something else.

5       Katzman also testified that in 2002 Leichner told him to  
6 change the registration because the Beech belonged to Katzman.  
7 Katzman failed to do so until after it was transferred to CACI  
8 and Katzman determined that he did not want "his plane" in the  
9 name of CACI.

10       Because of the credibility issues discussed above, I cannot  
11 accept this as sufficient evidence to show that the \$50,000  
12 payment was made. Also the dates and conduct do not support  
13 Katzman's contentions. For example, if Katzman had paid \$50,000  
14 to Leichner by the end of 2000, why did Leichner wait until 2002  
15 to suggest that the title be changed? Why didn't Leichner give  
16 Katzman a signed Bill of Sale, since Leichner surely had the  
17 forms as EAL and Continental Jet owned other planes? Why did  
18 Leichner - on behalf of MEI - sign it over to CACI two years  
19 after MEI had no further interest in the plane? Why did Katzman  
20 sign a Bill of Sale to CACI which clearly stated that MEI was the  
21 co-owner of the plane if he had bought out MEI's interest two  
22 years earlier? And why did Katzman sign the Beech over to CACI  
23 if he was the sole owner and would get no benefit from that  
24 transaction?

25       Since there is no evidence of these cash payments and since  
26 Katzman lacks credibility, I must give substantial weight to the  
27

1 acts that are documented. As of early September 2002, Leichner  
2 and Katzman both acted as though a Leichner entity had a co-  
3 ownership of the Beech. Therefore I find that the transfer of  
4 MEI's 50% interest to Katzman took place in September 2002.  
5 Further, the transfer was without reasonably equivalent value.  
6 Unlike the information on Continental Jet (discussed below), I  
7 have taken judicial notice of a series of lawsuits and judgments  
8 against Leichner and/or MEI, Inc. which demonstrate that in 2002  
9 the assets of Leichner, MEI, Inc., and the various other Leichner  
10 entities were unreasonably small to continue in business. Thus,  
11 the transfer of MEI's 50% ownership interest in the Beech Bonanza  
12 to Katzman shall be set aside pursuant to 11 USC § 548 (a) (1) (B)  
13 and Cal. Civ. Code § 3439.04(b).

14  
15 **c. The Transfer to CACI and from CACI to the Trustee**

16 Katzman disputes that the Trustee properly obtained title  
17 from CACI as to the nine planes, since they belonged to the  
18 partnership at the time of the alleged transfer. I am a little  
19 unclear as to Katzman's theory: (1) is he asserting that Leichner  
20 had no interest in the planes at the time of the transfer to CACI  
21 (except to the extent that Leichner was a general partner of  
22 CFCI, which owned the planes) and thus the transfer to CACI is  
23 totally void and fraudulent as to CFCI since CFCI received  
24 nothing from CACI; or (2) is he contending that Leichner could  
25 only transfer 50% of the value of the planes to CACI, since  
26 Katzman was the other 50% owner by virtue of his status as a 50%



1 partner in CFCI? As I have previously found, the nine planes  
2 belonged to Continental Jet and thus neither Katzman nor CFCI had  
3 any ownership interest and lack standing to dispute Continental  
4 Jet's transfer to CACI.

5  
6 **B. Whether the affairs of Continental Jet, EAL Jet and the**  
7 **Debtors were so hopelessly entangled that substantive**  
8 **consolidation of their assets would benefit all creditors.**

9 The Trustee, through his trial brief, says that substantive  
10 consolidation is not in dispute. Katzman is not a party to this  
11 claim for relief, though he testified that for him Leichner was  
12 Continental Jet.<sup>58</sup> Continental Jet is in default and it appears  
13 that EAL was never served. If EAL was never served, I cannot  
14 make a finding of substantive consolidation.

15 Assuming proper service was made and EAL's default was/is  
16 taken, I have very little evidence on this matter. The testimony  
17 is that only Continental Jet held title to the planes. There is  
18 no evidence as to the financial status of EAL or how it was run.  
19 The split up into three entities does not really resolve the  
20 matter. The evidence might be there, but it was not clearly  
21 pointed out to me. The Trustee will have ten days from entry of  
22 this Memorandum to designate the evidence which is already in the  
23 record and supports his request for judgment and to file a proof  
24 of timely service and request for entry of default as to EAL. If  
25 he does not, this counterclaim will be dismissed without  
26 prejudice.

---

27 <sup>58</sup> Katzman testimony, July 15, 2005.

1  
2 **C. Whether the Debtors, or any of them, made preferential**  
3 **transfers avoidable under 11 U.S.C. § 547.**

4 This case was filed on May 8, 2003. Transfers to insiders  
5 would fall within the preference period dating back to May 9,  
6 2002 and to non-insiders to February 7, 2003. There were no  
7 transfers between February 7, 2003 and the filing of the  
8 petition, and at the time of transfer of the planes to CACI it  
9 was not an antecedent creditor. Thus the only alleged  
10 preferences could be the transfer of the two Israeli planes and  
11 the Cessna 150 (#6211K) to CFCI and the 50% interest in the  
12 Bonanza to Katzman. Even though I have found that there was no  
13 transfer of any of the nine planes from Continental Jet to CFCI,  
14 if there had been a transfer I find no pre-existing debt and thus  
15 no preference.

16 The actual transfer of the Beech Bonanza took place in  
17 September 2002, which was within the insider preference period.  
18 Since Katzman claims to have been a general partner with Leichner  
19 in CFCI, he is an insider to Leichner.<sup>59</sup> Assuming that Katzman  
20 had paid Leichner/MEI in 2000 for the plane, there is an  
21 antecedent debt that was satisfied by the 2002 transfer. However  
22 the plane was not owned by Leichner but by MEI, so I must find  
23 that Leichner was MEI and that MEI was insolvent at the time of  
24 the transfer. Since I have taken judicial notice of the  
25 financial condition of MEI and Leichner, the only remaining issue

26  
27 <sup>59</sup> 11 USC § 101(31).  
28

1 is the alter ego status of Leichner and MEI and this evidence is  
2 not obvious to me.

3 Because of my findings on fraudulent transfer of the Beech,  
4 I do not believe that I need to comb the record to establish that  
5 MEI and Leichner were one or to determine that the evidence does  
6 not exist in this adversary proceeding. If either party feels  
7 otherwise, he is to present additional briefs pointing me to the  
8 evidence which is in the record. This brief will be due 10 days  
9 after entry of this Memorandum. The opposing party will then  
10 have an additional 10 days to submit a brief dealing with that  
11 evidence and/or providing additional evidence from the record.  
12 No new evidence will be considered. If no brief is timely filed,  
13 I will dismiss this claim without prejudice.

14  
15 **D. Whether Katzman and/or CFCI violated the preliminary**  
16 **injunction granted by this Court's order entered May 20, 2004.**

17 There is no evidence that Katzman/CFCI continued to fly the  
18 nine planes after the issuance of the preliminary injunction, but  
19 Katzman did fly the Beech Bonanza at least 6 times after that  
20 date. He claims ignorance that the injunction covered the Beech,  
21 but the order is short and clear and given Katzman's failure to  
22 cooperate with the Trustee, his disabling of the other airplanes,  
23 his action in hiding the logbooks, and his general lack of  
24 credibility, I find that he knowingly violated the injunction by  
25 flying the Beech Bonanza at least 6 times after knowledge of the  
26 injunction. However, the Trustee has not sought a contempt order  
27 and gives me no measure of damages. Since violation of the

1 preliminary injunction is not in the complaint, it is included in  
2 this trial only by virtue of the Pretrial Order.

3       The Trustee seeks a permanent injunction against the use of  
4 all aircraft. That will be granted as to the nine planes. As to  
5 the Beech, since Katzman is a 50% owner he has the right to use  
6 the whole plane and cannot be divested of that right by his co-  
7 tenant.<sup>60</sup> Katzman's co-ownership of the Beech is analogous to a  
8 partnership. As such, Katzman owes a duty of loyalty and duty of  
9 care to the partnership and must act as a trustee towards any  
10 property while in his possession.<sup>61</sup> In addition, Katzman must  
11 also bear the responsibility of any taxes or costs that befall  
12 the Beech while the property is in his possession.<sup>62</sup> Thus no  
13 permanent injunction will issue as to the Beech Bonanza. However  
14 Katzman is not to use it until he provides the Trustee with proof  
15 of insurance for the full value of the plane and for any  
16 liability caused by the plane, and with maintenance records  
17 showing that the plane is in an airworthy condition. Katzman is  
18 also to provide the Trustee with any other documents that would  
19 reasonably be required to protect the owner of an airplane.

20  
21 **E. Whether Katzman and/or CFCI violated the automatic stay of 11**  
22 **U.S.C. § 362.**

23       The nine planes belonged to CACI at the time of the filing,

---

24  
25 <sup>60</sup> See discussion at 16 Cal. Jur. 3d Cotenancy and Joint Ownership §§ 30, 58.

26 <sup>61</sup> Cal. Corp. Code § 16404.

27 <sup>62</sup> *Chapin v. Streeter*, 124 U.S. 360, 362 (1888).

1 but on August 11, 2003 Sorrells - on behalf of CACI - signed a  
2 bill of sale for each of the planes, thereby transferring  
3 ownership to the Trustee. These were filed with the FAA on  
4 August 12, 2003.<sup>63</sup> While the estate thus obtained an interest in  
5 the planes as of that date, CFCI still had a right to their use  
6 under the lease with CACI, which was in default for lack of  
7 payments but had not been terminated and was not to expire until  
8 September 2004.<sup>64</sup> However, once the lease was terminated, the  
9 automatic stay required that CFCI/Katzman cease any act to  
10 exercise control over the nine planes and that they turnover the  
11 planes to the Trustee.<sup>65</sup> The lease was terminated by an order  
12 entered on October 21, 2003 and Katzman/CFCI had notice of this  
13 as the order was served on their counsel.<sup>66</sup> Turnover was  
14 demanded beginning in the fall of 2003 and once the lease was  
15 terminated, Katzman and CFCI were in violation of the automatic  
16 stay for their continuing use of the nine planes.

17 Beyond his continued use of the planes, Katzman also  
18 actively prevented the Trustee from removing the planes from the  
19 CFCI premises. Katzman testified that he took the nose wheels  
20 off the planes to prevent Chipperfield (who was the Trustee's  
21 agent) from removing them and that when Chipperfield came with a  
22

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23 <sup>63</sup> Exhibits 24-32.

24 <sup>64</sup> Exhibit 19.

25 <sup>65</sup> 11 USC § 362(a)(3), § 542.

26 <sup>66</sup> Request for Judicial Notice #30 is an unsigned copy of the Order. The docket reflects  
27 that this was entered on October 21, 2003 as docket #170.

1 tug, Katzman would not let him touch the airplanes.<sup>67</sup> This is  
2 also a violation of §362(a)(3), as is Katzman's secreting of the  
3 logbooks.

4 Katzman is withholding the \$52,000 insurance check for the  
5 Piper PA (#80908), which is property of the estate. He is  
6 immediately to turnover the check to the Trustee and to cooperate  
7 with the Trustee to make sure that a new check is either issued  
8 solely in the name of the Trustee or to endorse a new check over  
9 to the Trustee without delay.

10  
11 **F. Whether the Trustee is entitled to recover damages and/or**  
12 **fees and costs against Katzman and/or CFCI for withholding and**  
**operating the ten aircraft without the Trustee's consent.**

13 I have not been presented with records showing the amount of  
14 operations or flight time for the nine planes after the lease was  
15 terminated. In part this was because the logbooks have  
16 disappeared, although Katzman testified that he has computer  
17 maintenance records which presumably would show the usage during  
18 the time between the termination of the lease and the preliminary  
19 injunction. There is some testimony that planes lose their value  
20 when flown. These are older planes which were rented out or used  
21 in a flight school. While there is no doubt that they lost some  
22 value through use and the passage of time, I have no tools to  
23 measure this. However I do have evidence of the purchase prices  
24 of the planes, their general condition, their insured values, and  
25 the decrease in value due to the lack of logbooks.

26 \_\_\_\_\_  
27 <sup>67</sup> Katzman testimony, July 15, 2005.

1 According to Katzman's figures (which are undisputed except  
2 as to the cost of the two Israeli planes), the total purchase  
3 price for the eight remaining planes which had been registered to  
4 Continental Jet was \$386,000. Robert Chipperfield testified to  
5 seeing appraisals of some or all of the planes, but they are not  
6 in evidence.<sup>68</sup> He also testified that the planes were in a  
7 little less than average quality for their age at the time of his  
8 inspection in May 2004.

9 The only other evidence that I have to estimate loss of  
10 value due to time and use is the amount of insurance carried on  
11 the planes and they don't match up well. Katzman testified that  
12 he may have underinsured the planes to keep the premiums down.<sup>69</sup>  
13 But Exhibit 8 in comparison with Katzman's testimony and the  
14 first amended complaint show some planes insured at a much higher  
15 value than he asserts was paid, one of the Israeli planes totally  
16 uninsured, and the stolen plane insured even though it had  
17 apparently been taken by the FBI prior to this September 2002  
18 policy.<sup>70</sup>

19 Their value due to the lack of logbooks will have decreased  
20 substantially. Robert Chipperfield testified that the value will

---

21  
22 <sup>68</sup> The appraisals are not in evidence. The only other estimate of value is that given by  
23 Katzman in March 2004, when he testified in his deposition that the planes had a total value of  
24 about \$220,000. Deposition of Simon Katzman, March 9, 2004, 265:14-17. I find this no more  
25 credible than the balance of Katzman's testimony, particularly since some 18 months earlier  
Katzman had insured these for \$363,000 (Exhibit 8) and - according to his testimony - he might  
have underinsured them.

26 <sup>69</sup> Katzman testimony, July 15, 2005.

27 <sup>70</sup> See Attachment 1.

1 have dropped at least 25% and possibly as much as 50%-75%  
2 depending on the amount of maintenance that must be done to meet  
3 the standards. Forgetting the intentional secreting of the  
4 logbooks, if the planes had been turned over in Fall 2003 as  
5 required, the logbooks would not have been "stolen," since that  
6 act occurred in 2004. Thus, the loss of the logbooks is part of  
7 the damages that Katzman must pay for withholding the planes.

8 I simply do not have enough evidence to determine the damage  
9 for use from October 2003 through May 2004 or, incidentally, for  
10 Katzman's act in secreting the logbooks. I do not know the value  
11 without concern for the logbooks and have no evidence of other  
12 costs that were incurred by the Trustee due to the lack of  
13 turnover.

14 I will set a hearing to determine damages as set forth  
15 below.

16 As to the Beech Bonanza, as co-owner Katzman had a right to  
17 use it and there is no indication that he would have owed  
18 anything to MEI for that use.<sup>71</sup> Thus, he owes nothing to the  
19 Trustee. However Katzman and the Trustee are now co-owners and  
20 there will be a negative impact on the value due to the lack of  
21 logbooks. Katzman had a responsibility to maintain the plane. As  
22 stated above, Katzman's co-ownership is analogous to a  
23 partnership and therefore, it is governed by the Uniform  
24 Partnership Act. Accordingly, Katzman owes a duty of care and a  
25 duty of loyalty to the partnership and any property in his

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26  
27 <sup>71</sup> 16 Cal. Jur. 3d, Cotenancy and Joint Ownership §§ 30, 58.



1 possession.<sup>72</sup> The duty of loyalty includes a duty to account to  
2 the partnership and hold as trustee for it any property.<sup>73</sup> The  
3 issue of damage due to the lack of logbooks will be determined at  
4 the evidentiary hearing described below.

5  
6 **G. If there was a partnership agreement between Moshe Leichner**  
7 **and Katzman, whether or not Katzman is entitled to a set off for**  
8 **all services performed, assets contributed and expenses paid.**

9 Katzman testified that he would be entitled to a setoff or  
10 credit for his expected salary of \$5,000 per month for 30 months  
11 and miscellaneous expenses that he paid (though he was willing to  
12 waive that and provided no figures or documentation for the items  
13 he identified: insurance, rent, maintenance, and draws). This is  
14 basically a moot issue, since I have determined that the  
15 partnership (CFCI) did not own the nine planes and there may not  
16 be any other assets for distribution and it appears that CFCI  
17 never made a profit.

18 Cal. Corp. Code § 16401 (h) states that "a partner is not  
19 entitled to remuneration for services performed for the  
20 partnership, except for reasonable compensation for services  
21 rendered in winding up the business of the partnership." The  
22 facts of Drdlik v. Ulrich,<sup>74</sup> are somewhat similar to the present  
23 case. Three parties agreed to form a corporation to construct  
24 two houses on two hillside lots that one of them owned. One

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25 <sup>72</sup> Cal. Corp. Code § 16404.

26 <sup>73</sup> *Id.* at § 16404(b)(1).

27 <sup>74</sup> 203 Cal.App.2d 360 (Ct.App. 1962).

1 party was to transfer the lots to the new corporation for a set  
2 amount, which would be paid after the completed homes were sold,  
3 and was to advance all funds necessary to build the houses. The  
4 second party was to work out the financing and the third party  
5 was to supervise the construction. Each was to take a set share  
6 of the profits on sale of the houses.

7 The corporation was formed, but the lot owner never recorded  
8 the deeds transferring title to the corporation. Because of  
9 unforeseen difficulties in construction, the houses were sold at  
10 a loss, with the lot owner keeping the money. The party who  
11 supervised the construction sued the lot owner for the reasonable  
12 value of his services. The Court of Appeal declared a non-suit  
13 and held that "the fact that a joint venture fails and there are  
14 losses rather than profits does not entitle one joint adventurer  
15 to sue another for services rendered on the joint venture."<sup>75</sup>

16 The question here is whether Leichner's failure to actually  
17 contribute the planes to CFCI creates a failure of the  
18 partnership or joint venture and thus provides Katzman with a  
19 claim against Leichner's successor-in-interest [the Trustee] for  
20 the value of his services. I do not believe that it does in this  
21 case for several reasons, the primary one being that Katzman knew  
22 from the beginning that all planes were to be held in the name of  
23 Continental Jet and thus were at the sole disposal of Leichner.  
24 He actively cooperated in this. Whatever his exact agreement was  
25 concerning his contribution of labor, there are no time records,

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26  
27 <sup>75</sup> *Id.* at 366.

1 written documents, or accountings to support it. I am taking his  
2 word that he never received a salary, but again there are no  
3 written records to show where the money went since apparently  
4 Leichner paid most of the bills.

5 Further, there is no profit from the joint venture to be  
6 divided or from which Katzman can seek compensation. He was  
7 never an employee of the joint venture. At most, we have a joint  
8 venture or partnership<sup>76</sup> which failed and should be dissolved (if  
9 there are any assets to sell). Katzman would be entitled to his  
10 share of those assets, but not an additional credit for work done  
11 for the benefit of the partnership/joint venture. Since this is  
12 not a dissolution action and the nine planes do not belong to  
13 CFCI, the request of Katzman for a setoff or any affirmative  
14 relief is denied.

15 Katzman demands that the trustee pay storage fees for the  
16 nine planes from the date of the preliminary injunction (starting  
17 May 20, 2004) through the present in the total amount of about  
18 \$40,000.<sup>77</sup> Since Katzman was wrongfully withholding the planes  
19 by disabling them and removing their wheels, he has no legitimate  
20 claim against the Trustee for storage fees. This request is  
21 denied.

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24 <sup>76</sup> The terms “partnership” and “joint venture” are used interchangeably. From a legal  
25 standpoint, both relationships are virtually the same. Courts have ruled that the rights and  
26 responsibilities of joint adventurers, as between themselves, are governed by the same principles  
which apply to partnerships. *Zeiback v. Nasser*, 12 Cal. 2d 1, 12 (1938).

27 <sup>77</sup> Exhibit 1009. Katzman testimony, July 12, 2005.

1 **IV. REMAINING ISSUES**

2 If either party feels that I should supplement this Proposed  
3 Memorandum to add additional findings of fact, he is to present a  
4 very brief document directing me to the evidence which is already  
5 in the record. This is to be filed no later than 10 days after  
6 entry of this Memorandum and the other party will have 10 days  
7 thereafter to respond. If neither party feels that this is  
8 necessary, I will finalize my Memorandum to note this and enter  
9 the Memorandum and Order the findings, later to be supplemented  
10 as to damages.

11 There will be a limited discovery period on damages ending  
12 October 31, 2005. The parties are to exchange the identity of  
13 any experts and reports or appraisals by September 30, 2005. The  
14 parties are to exchange any other documentary evidence that they  
15 plan to admit and a witness and evidence list<sup>78</sup> by November 18,  
16 2005. The evidentiary hearing on damages for violation of the  
17 automatic stay, for violation of the preliminary injunction, and  
18 for Katzman's withholding and/or use of the planes without the  
19 trustee's consent and his withholding or destruction of the  
20 logbooks will be held on December 2, 2005 at 9:00 a.m.

21  
22 DATED: 8/29/05

\_\_\_\_\_  
/s/

23 GERALDINE MUND  
24 United States Bankruptcy Judge  
25

26 \_\_\_\_\_  
27 <sup>78</sup> Katzman will begin numbering his exhibits with number 1013 and the Trustee will  
28 begin with number 51.

CERTIFICATE OF MAILING

I, S. Marshall, a regularly appointed and qualified clerk of the United States Bankruptcy Court for the Central District of California, do hereby certify that in the performance of my duties as such clerk, I personally mailed to each of the parties listed below, at the addresses set opposite their respective names, a copy of the **Preliminary Memorandum of Opinion after Trial** in the within matter. That said envelope containing said copy was deposited by me in a regular United States mailbox in the City of Los Angeles, in said District, on AUG 29 2005

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S. Marshall

(Clerk)